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Kimche Grand Jury Testimony Delayed

Subpoenaed Former Israeli Diplomat Was Early Contact in Iran Arms Sale

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The Israeli government, with the apparent backing of the State Department, succeeded yesterday in delaying independent counsel Lawrence E. Walsh's effort to obtain grand jury testimony from David Kimche, a former top Israeli diplomat who was a key early contact in the secret sale of American arms to Iran.

Yesterday's legal proceedings were secret, but when they were over it appeared that the Israelis had successfully thwarted Walsh's effort to get Kimche's testimony.

Leaving the U.S. Courthouse yesterday after a two-hour closed hearing before U.S. District Court Chief Judge Aubrey E. Robinson, Kimche told reporters, "All I can say is I'm leaving. As you can see, I'm not appearing before the grand jury today. I can leave the country when I want and come back when I want."

A former Israeli intelligence official who was director general of the Foreign Ministry in 1985 when he broached an arms-for-hostage deal with Iran to White House officials, Kimche said he would leave the country soon.

Sources said Robinson granted the delay in the grand jury appearance on condition that Kimche agree to return if the judge rules for Walsh on the legal issues.

Even if Walsh succeeds in what now might be protracted legal arguments, there is no guarantee that Kimche would testify. Foreigners are allowed to invoke Fifth Amendment protections against self-incrimination. And the Israelis have said Kimche would be barred from testifying by Israeli secrecy laws.

An Israeli source, who asked not to be identified, also said that Walsh's investigation would get no cooperation from his government as long as the subpoena of Kimche is outstanding.

Walsh's office declined comment, but the Israeli arguments opposing the subpoena seemed to have some backing from the State Department.

Department spokesman Charles E. Redman said yesterday that its position is that Kimche "does not currently enjoy diplomatic status. He can be subpoenaed to appear before a grand jury. He may, however, be immune from providing testimony . . . concerning special missions to the United

States while he was director general of the Foreign Ministry."

Sources said that State Department attorney Bruce Rashkow delivered a letter to the judge expressing concern that enforcement of the subpoena would open U.S. diplomats to similar treatment abroad. Redman said he didn't know about the letter, but "what's at issue here . . . is the principle of reciprocity. The department would be very concerned by efforts of foreign countries to compel past and present U.S. officials to disclose sensitive information in violation of United States laws."

Kimche was accompanied at the hearing by Israeli Ambassador Meir Rosenne, Oded Eran, the No. 2 embassy official here, and Melvin Rische, a Washington attorney whose firm represents the Israeli government. Two of Walsh's attorneys were present; Rashkow waited outside with reporters.

One Israeli official said after the hearing that Robinson set a timetable giving each side time to file legal papers before he makes a decision on whether to enforce the subpoena, which was served on Kimche Wednesday.

Israeli officials have said before, and embassy spokesman Yossi Gal repeated yesterday, that the subpoena raises important issues about the way governments conduct business with each other. "This affects not only Israel, but the wider issue of diplomatic conduct between governments," Gal said. "You don't expect representatives of foreign governments to be subjected to subpoenas."

In Israel yesterday Prime Minister Yitzhak Shamir denounced the Walsh effort to subpoena Kimche as "illegal . . . a clear violation" of the agreement between the two governments on how questions about Israel's role in the Iran-contra affair would be handled. Shamir said Kimche "would not be permitted to be interrogated" by the grand jury.

The Israelis reached an agreement with the congressional investigating committees to provide financial information and answer questions in writing about the role of Kimche and other Israelis. But Walsh never agreed with Israeli conditions on immunity for its citizens and secrecy for the material.

It could not be learned yesterday why Walsh is seeking Kimche's testimony. Ki-

mche met with Robert C. McFarlane, then President Reagan's national security adviser, in the summer of 1985 and vouched for the reliability of Manucher Ghorbanifar, an Iranian intermediary, who promised that Americans held hostage in Lebanon would be freed if U.S. arms were sold to Iran, according to the Tower commission.